



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2019-0139]**

#### **Entry-Level Driver Training: United Parcel Service, Inc. (UPS); Petition for Reconsideration of Original Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; denial of petition for reconsideration of original application for exemption.

**SUMMARY:** FMCSA announces its decision to deny reconsideration of the Agency's initial denial of the application for exemption filed by United Parcel Service, Inc. (UPS). UPS originally sought exemption from a provision in the Entry-Level Driver Training (ELDT) final rule requiring two years of experience for training instructors. FMCSA denied that petition on December 9, 2019. UPS believes that its current process of preparing driver trainers exceeds any skill set gained merely by operating a tractor-trailer for two years. UPS stated that its reconsideration request would ensure that it can continue to exceed the current regulatory requirements and provide proper training of its drivers and improve highway and public safety. FMCSA analyzed the petition for reconsideration and the public comments submitted, and determined that the application lacked evidence that would ensure that an equivalent level of safety or greater would likely be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-2722; [MCPSPD@dot.gov](mailto:MCPSPD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

## Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, FMCSA-2019-0139 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

The ELDT final rule was adopted pursuant to 49 U.S.C. 31305(c), and is based in part on consensus recommendations from the Agency's ELDT Advisory Committee (ELDTAC), a negotiated rulemaking committee. The rule enhances the safety of commercial motor vehicle (CMV) operations on our Nation's highways by establishing a minimum standard for ELDT and increasing the number of drivers who receive ELDT. The rule revised 49 CFR part 380, Special Training Requirements, to include, among other things, driver training instructor qualifications. Under 49 CFR 380.713 a driver training instructor must have two years' experience and have held a commercial driver's license (CDL) for 2 years, as set forth in the definitions of “behind-the-wheel (BTW) instructor” and “theory instructor” in 49 CFR 380.605.

On June 19, 2019, FMCSA published a UPS application for exemption from two provisions of the ELDT final rule and requested public comment [84 FR 28623]. UPS specifically requested an exemption from: (1) the requirement in 49 CFR 380.713 that a driver training instructor hold a CDL and have 2 years' experience driving a CMV, as set forth in the definitions of behind-the-wheel (BTW) instructor and theory instructor; and (2) the requirement in 49 CFR 380.703(a)(7) to register each training location in order to obtain a unique Training Provider Registry number applicable to that location.

The Agency received 112 comments, including 58 supporting the requested exemptions and 51 opposing them. Three other commenters had no position either for or against the application and provided no substantive comments.

On December 9, 2019, the Agency denied the UPS exemption request because the application did not provide an analysis of the safety impacts the requested exemptions may cause, as required by 49 CFR 381.310(c)(4), and did not explain how the exemptions would likely achieve a level of safety equivalent to, or greater than, the level

that would be achieved by complying with the current regulations, as required by 49 CFR 381.310(c)(5).

#### **IV. Request for Reconsideration of Agency Decision**

On July 1, 2020, UPS requested that FMCSA reconsider its original denial. UPS believes that its current process of preparing driver trainers exceeds any skill set gained merely by operating a tractor-trailer for 2 years. The company also believes that a 2-year experience requirement doesn't automatically equate to success as a CMV driver trainer. UPS has provided the Agency with updated information since the original denial, explaining that many of their locations have experienced turnover issues with driver trainers because of the ELDT rule changes in 2018. UPS added that it had to hire 100 candidates to attempt to net the 50 trainer positions it needed across the United States. Of the 100 trainers hired, UPS has been able to retain only 38.

#### **V. Method to Ensure an Equivalent or Greater Level of Safety**

To ensure an equivalent level of safety, UPS stated that its driver training program is a train-the-trainer approach that it believes is an industry-leading curriculum that produces excellent trainers and, by extension, excellent CMV operators. When UPS became aware of the ELDT rule changes, it was in the process of making some operational network enhancements that would prompt significant hiring during the following years. To get ahead of the original ELDT rule compliance date of February 7, 2020, UPS attempted to hire trainers from outside of UPS to supplement the certified trainers already in place. UPS encountered challenges throughout the training process regarding these trainer positions, mainly because of the level of comprehensive training that they would need to have and demonstrate as a trainer. UPS claim of high turnover rate in the trainer positions is pertinent to its request for reconsideration of the original denial.

#### **VI. Public Comments**

On September 23, 2020, FMCSA published notice of this reconsideration request and sought public comments (85 FR 59850). The Agency received 113 total comments. The Owner-Operator Independent Driver's Association (OOIDA) and the Commercial Vehicle Training Association (CVTA) opposed reconsideration of denial of UPS' original application for exemption. OOIDA opposed the initial exemption request and argued that UPS failed to present any new information that would warrant reconsideration. The minimum experience standards for trainers included in the ELDT rule were built on consensus recommendations of the ELDTAC, a group of 26 industry stakeholders, and are firmly rooted in highway safety. OOIDA further commented that the 2-year delay of the ELDT rule compliance date until February 7, 2022, issued by FMCSA provides sufficient time for all entities, including UPS, to prepare their respective training programs and comply with the rule's new implementation date.

CVTA reaffirmed its original opposition to UPS' exemption request. CVTA referenced its "Pre-CDL Instructor Certification Program" designed to train the trainer, and while it agreed that the skills needed to effectively teach versus the skills of being a driver acquired by holding a CDL for 2 years are different, CVTA believes the uniform application of the ELDT regulation for all training providers should be established and followed by anyone training pre-CDL students. It is CVTA's belief that reconsideration, if granted, would set a bad precedent.

Two other individuals opposed reconsideration. Other reasons presented by commenters included the assertion that the lowering of the requirements specified for driver training instructors would open the door for similar requests or even require a change to the ELDT rule.

Most comments supporting reconsideration were from individuals including UPS drivers and current or former UPS driver trainers. Most of these commenters cited the excellence of the UPS driver training program and the overall company safety record.

They argued that the UPS training program is one of the most comprehensive in the industry, that its driver trainers are put through an intense training program and are required to follow strict methods and procedures.

## **VII. FMCSA Safety Analysis and Decision**

FMCSA has evaluated UPS' request for reconsideration and the public comments and has decided to deny the request. The UPS reconsideration request indicated that the company had encountered challenges filling new trainer positions in compliance with the provisions of the ELDT final rule. UPS stated that its internal Driver Trainer School has produced what the company believes to be the best trainers in the industry and that its training provides a consistently high standard through a comprehensive, consistent training format throughout the organization, both for initial training and recurrent annual training.

When the Agency established the rules mandating ELDT, it relied upon research indicating that the rules improve CMV safety. The Moving Ahead for Progress Act of the 21<sup>st</sup> Century mandated that the FMCSA issue regulations to establish minimum entry-level training requirements for interstate and intrastate applicants obtaining a CDL for the first time, CDL holders seeking license upgrades, and those seeking various CDL endorsements. In response to that statutory mandate, the Agency published a final rule on "Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators," on December 8, 2016 [81 FR 88732]. The "framework" for this rule was based on the ELDTAC's consensus recommendations "to the maximum extent possible consistent with its legal obligations" as required under the Negotiated Rulemaking Act (5 U.S.C. 563(a)(7)). These final regulations outlined new eligibility standards that training providers must meet to deliver ELDT, including the qualification and experience requirements for BTW and Theory or Classroom instructors. As OOIDA and CVTA indicated in their opposing comments, the UPS application does not provide an analysis

of the safety impacts that reconsideration of the denial may cause. It also does not provide countermeasures to be undertaken to ensure that the request would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the ELDT regulations.

The Agency cannot ensure that the exemption would achieve the requisite level of safety. The ELDT rule, mandated by Congress, is based on the “framework” of the ELDTAC’s consensus recommendations, including the instructor requirements. The UPS request for reconsideration must be judged based on the exemption standards in 49 CFR Part 381. As indicated above, UPS’ application fails to meet those standards. The request for reconsideration of the original application for exemption is therefore denied.

**Robin Hutcheson,**

*Deputy Administrator.*

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